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A Somber Birthday

Remarks by CPCS Chief Counsel William J. Leahy on the Occasion of the 40<sup>th</sup> Anniversary of the Decision Establishing the Federal Constitutional Right to Counsel in Gideon v. Wainwright, 372 U.S. 335 (1963)

I've been asked to sum up forty years of constitutional history in just three minutes here this morning; so let me get right to the point. Despite a proud Massachusetts history in anticipating the constitutional need for counsel, the early extension of that right to lesser criminal and many non-criminal cases, and the establishment of an independent agency to provide all counsel services required by our Constitution, this birthday of the federal right to counsel in felony cases finds us mired in crisis. It is most important to emphasize that this is not a crisis of inadequate standards, or insufficient independence, or poor lawyering, or any lack of zeal.

No, the right to counsel in Massachusetts is today in excellent condition, in every respect but one. We have a capable and public-spirited cadre of attorneys who serve the public interest by representing the poor with competence and passion; we have an agency which takes seriously its responsibility to provide high quality representation; we have training expectations and performance standards which meet or exceed every comparison. We simply do not have enough money! Or, to be more precise, we do not receive sufficient funding to pay a reasonable hourly rate to assigned private counsel, or reasonable salaries to our staff attorneys. It is both ironic and accurate to observe that Massachusetts, which did so much to create the counsel right enshrined by Gideon, has failed to adequately support the vibrant development of that right.

Let today, this birthday, this anniversary, serve as a wake-up call to every lawyer in the Commonwealth of Massachusetts. We are gathered here not simply or primarily to celebrate and to reaffirm the fundamental right to counsel; but to band together in a common cause to work and to fight, for as long and as hard as it takes, to achieve full implementation of that right. That struggle must begin right now, and it must not end until we have accomplished our goal. I travel directly from here to the city of Lynn, to present the case for higher counsel compensation to the joint hearing of the House and Senate Committees on Ways and Means. Each and every one of you will visit your own Representative and Senator, and other legislators, to explain that you

have reached the limit of your ability to subsidize the Commonwealth's responsibility to provide counsel for the poor; and to respectfully enlist their support in our struggle to secure adequate compensation for the attorneys whose dedication gives meaning to the principle established by Gideon, that the right to counsel is fundamental to the provision of fair trials in our adversary system.

I need not warn you, for you know too well, that this struggle will be difficult, and your patience will be tested. But let us resolve today to advocate as resourcefully and zealously and indefatigably for the preservation of the constitutional right to counsel, as we do in every case in the pursuit of justice for our individual clients. If we can do this, we are certain to find success.